

## **M E M O R A N D U M**

TO: Members, Public Disclosure Commission

FROM: Susan Harris, Assistant Director

DATE: March 20, 2003

RE: Executive Summary and Staff Recommendations Regarding Contributions to Des Moines City Council Candidates in 1999 and 2001, PDC Case Nos. 02-296, 03-153, 03-155, 03-156 and 03-158

Staff has completed its investigations into allegations that contributions reported by candidates for Des Moines City Council elections in 1999 and 2001 may have been given in a manner as to conceal the true source of the funds. In April 2002, Staff first received a complaint alleging that in 2001, political advertising had been distributed and advocacy calls had been made for candidates in the Des Moines City Council elections, and the contributions had not been reported to the PDC. The matter was scheduled for enforcement action at the January, 2003 Commission meeting. However, Counsel for the Respondent asked for and was granted a continuance until March, stating that his client would be out of the country for 30 days. Subsequent to the scheduling of the enforcement hearing, in February, 2003, staff received two additional complaints alleging that the true sources of the contributions reported by Des Moines City Council candidates in the 1999 election were in doubt.

This memo will detail in chronological order the events that occurred, rather than in the order the complaints were received.

### **Background**

For years, officials at the Port of Seattle have proposed building a third runway at Seattle-Tacoma International Airport. That proposal has been very controversial. Many city officials in the area, including certain Des Moines city council members, are against the third runway, citing the construction upheaval as well as environmental concerns. If a third runway is built, more than 17 million cubic yards of fill must be brought to the site. In 1997, Henry (Hank) Hopkins, a businessman from Lynnwood, proposed building a conveyor system that would be used to move the necessary fill to the site of the third runway. The system would transport gravel from pits around the Puget Sound area on barges. The barges would unload the gravel onto a conveyor belt located on the Des Moines waterway, and the gravel would be carried to the construction site. The plan was intended to ease traffic congestion because gravel trucks would not be

traveling on the already busy surface roads. Mr. Hopkins established a limited liability corporation, Environmental Materials Transport, LLC, (EMT) to undertake the project. EMT is a wholly owned subsidiary of Wescot Company, which is solely owned by Mr. Hopkins.

Mr. Hopkins attended Des Moines City Council meetings and applied for permits to allow for the construction of his conveyor belt project to begin. The City Council denied Mr. Hopkins' applications. He also requested an amendment to the City's Comprehensive Plan which would allow conveyor belts in open spaces. The City Council decided not to change the plan.

Mr. Hopkins sought other investors for his project. As a result, a group of business people formed TME Capital Group, LLC, to provide financing for EMT's conveyor system projects. TME's investors are Elling Halvorson, Catherine (Cathy) Boshaw, Doug Edlund, Tim Teteak, Lon Halvorson and John Taylor. An additional investor, David Chevalier, lives in Hawaii and does not attend meetings of the group. All EMT checks require two signatures, usually Mr. Hopkins and one of the investors.

Mr. Hopkins periodically called meetings of the investors to update them on the status of the project or to seek additional funding. Not all of the investors were present for all of the meetings.

## **1999---TME and its investors and EMT and its managers**

In early September 1999, Mr. Hopkins met with Des Moines City Council candidates Henry M. (Mike) Foote, Jr., and Marty Michalson. Mr. Hopkins was interested in their views on the third runway. Even if the candidates were against the third runway, if it were to be approved, Mr. Hopkins wanted to know whether they would be open to the conveyor belt system for transporting gravel to build the third runway. When he met with Mr. Michalson, Mr. Hopkins gave him a video of the project. Mr. Foote indicated to Mr. Hopkins during their meeting that he had already seen the video.

After meeting with the candidates, Mr. Hopkins reported back to some of his investors, including Cathy Boshaw and Elling Halvorson about the meetings. He reported that he believed that the candidates had open minds and, if elected, might be more amenable to the conveyor system than the then city council members. There was discussion about contributing funds to both candidates.

After the meeting with Mr. Hopkins, the TME investors met separately from Mr. Hopkins and decided to contribute funds to candidates Foote and Michalson. Cathy Boshaw and Elling Halvorson played key roles in deciding how the contributions would be made. They said that there was concern by TME investors that contributions coming from TME or EMT might "taint" the candidates and would "bias other people towards them" if it were known that the funds came from any of the TME investors. They also expressed concern that the candidates, if elected,

might “feel beholden to the group.” Cathy Boshaw then called Denis Bryant and asked Mr. Bryant if he would make contributions of \$2,000 each to the two candidates, with the assurance that he would be reimbursed.

Mr. Bryant has known Ms. Boshaw for many years. Ms. Boshaw has been an investor in some of Mr. Bryant’s business ventures. Elling Halvorson also invested in one of Mr. Bryant’s business projects. According to Mr. Bryant and Ms. Boshaw, they did not discuss the legalities of contributions in this manner. Mr. Bryant considered Ms. Boshaw a mentor, and believed that she was ethical and would not do anything illegal.

Ms. Boshaw gave Mr. Bryant phone numbers for the candidates so that he could call them and obtain their mailing addresses. EMT issued a check on September 16, 1999, in the amount of \$4,000 to Mr. Bryant. Mr. Hopkins personally filled out the \$4,000 reimbursement check to Denis Bryant, and was a signator on that check.

On or around September 22, 1999, Mr. Bryant sent checks to candidates Foote and Michalson in the amount of \$2,000 each. Mr. Foote reported receiving the contribution from Mr. Bryant on September 24, 1999 and Mr. Michalson reported receiving the contribution from Mr. Bryant on September 23, 1999. Mr. Bryant included a letter with the contribution to Mr. Michalson indicating that Mr. Bryant appreciated Mr. Michalson’s view on the third runway. (No one could recall whether Mr. Bryant sent a similar letter to Mr. Foote.) Neither Mr. Foote nor Mr. Michalson were aware that Mr. Bryant was not the actual source of the funds.

After the meeting of TME investors in which the giving of the contributions was discussed, and after a business meeting with Ginger Marshall, Ms. Boshaw and Mr. Halvorson asked Ms. Marshall to contribute to one or both of the candidates. Ms. Marshall agreed to do so. Like Mr. Bryant, Ms. Marshall is involved in business ventures in which Ms. Boshaw and Mr. Halvorson are major investors. Ms. Marshall said she did not believe that either Mr. Halvorson or Ms. Boshaw would ask her to do something that they knew to be illegal.

On October 22, 1999, Ms. Boshaw wrote out a check to Ms. Marshall in the amount of \$450. Mr. Michalson reported receiving a \$350 contribution from Ms. Marshall that was deposited into his campaign account on October 27, 1999. The remaining \$100 is unaccounted for, and no one can explain the difference. Mr. Michalson stated that he did not know Ms. Marshall, and called her to ask why she contributed to his campaign. No evidence was found that Mr. Michalson knew that the true source of the contribution was anyone other than Ms. Marshall.

Mr. Halvorson, owner of Monarch Enterprises, then met with one of his employees, Gary Collett. Mr. Collett was property manager for many of Mr. Halvorson’s companies and a personal friend of Mr. Halvorson. Mr. Halvorson asked Mr. Collett to write a check in the amount of \$250 to candidate Michalson. On October 22, 1999, Mr. Collett issued a check to Mr. Michalson. Mr. Michalson reported receiving a \$250 contribution from Mr. Collett that was

deposited into his campaign account on October 27, 1999. Based on what Mr. Collett thought to be an agreement with Mr. Halvorson, Mr. Collett included his \$250 contribution to Mr. Michalson on his expense account and received reimbursement from Monarch Enterprises on December 22, 1999.

Neither Mr. Foote nor Mr. Michalson were successful in their bid for Des Moines City Council.

## **Staff Recommendations**

Staff believes that Environmental Materials Transport, LLC, and its managers Hank Hopkins, Elling Halvorson and Cathy Boshaw, and TME Capital Group LLC, and its investors Elling Halvorson, Cathy Boshaw, Doug Edlund, Tim Teteak, Lon Halvorson and John Taylor, acted in a manner so as to conceal the true sources of contributions made to candidates Mike Foote and Marty Michalson in 1999. Staff believes that these acts were intentional. Two of the respondents admitted that they did not want to “taint” the candidates or have the candidates feel any bias towards them if the public were to know that the contributions had come from EMT and its managers or TME and its investors. These investors were aware that the law required disclosure of contributor names. It is manifestly unreasonable for them to maintain that this same law would permit use of some name other than the true contributor. The contributions to the candidates were concealed as follows:

- Hank Hopkins meets with candidates
- Hank Hopkins reports to investors that candidates may be open to conveyor system---contributions to candidates discussed
- Investors (TME group) decide to contribute
- Cathy Boshaw asks Denis Bryant to contribute \$2,000 to 2 candidates
- Denis Bryant sends a \$2,000 check to each candidate
- Hank Hopkins writes \$4,000 EMT check to Denis Bryant for payment of contributions
- Cathy Boshaw and Elling Halvorson ask Ginger Marshall to contribute to candidate(s)
- Ginger Marshall contributes \$350 to Marty Michalson
- Cathy Boshaw writes a \$450 personal check to Ginger Marshall
- Elling Halvorson asks Gary Collett to contribute to candidate(s)
- Gary Collett writes \$250 check to Marty Michalson

- Gary Collett submits expense voucher to include \$250 reimbursement for contribution. Receives reimbursement from Monarch Enterprises, owned by Elling Halvorson

**Recommendation #1.** Staff recommends that in PDC Case No. 03-158, the Commission finds that EMT and its managers Hank Hopkins, Catherine Boshaw and Elling Halvorson, and TME and its investors Elling Halvorson, Catherine Boshaw, Doug Edlund, Tim Teteak, Lon Halvorson and John Taylor committed multiple apparent violations of RCW 42.17.120, intentionally concealing the true source of contributions to 1999 Des Moines City Council candidates Mike Foote and Marty Michalson and refer the matter to the Office of the Attorney General for further action.

**Recommendation #2.** Staff recommends that the Commission dismiss the allegations against the following persons named in PDC Case No. 03-158 for the reasons given:

- Denis Bryant---Mr. Bryant was asked by someone he considered his mentor and who was also a major investor into some of his business ventures to do her a favor. Because he thought so highly of Ms. Boshaw, and because he believed she would never ask him to do something illegal, he felt that he owed her this favor.
- Ginger Marshall—Ms. Marshall, too, was asked by two people who were major investors in her business venture to make the contribution. She also thinks very highly of both Ms. Boshaw and Mr. Halvorson, and believes that they would not ask her to do something illegal. Ms. Marshall also felt that she was indebted to them and agreed to make the contribution.
- Dixie Collett---Despite the identification by the candidate that Ms. Collett was a contributor, the Staff discovered that Ms. Collett's husband actually wrote and signed the contribution check. Ms. Collett did not make contributions to candidates in 1999.
- Michael Mehlhoff and Enviroc, Inc.---Mr. Mehlhoff is the owner of Enviroc, Inc. Mr. Hopkins is an investor in that company and is on the board of directors. Enviroc, Inc. made a contribution to both Mr. Foote and Mr. Michalson. No evidence was found that these contributions were reimbursed by another person.

**Recommendation #3.** Staff recommends that the Commission also dismiss the allegations against Henry M. (Mike) Foote, Jr., PDC Case No. 03-155, because Mr. Foote received a check from Denis Bryant. Mr. Foote reported the contribution from Mr. Bryant. No evidence was found that Mr. Foote was aware that Mr. Bryant was not the true source of the contribution.

**Recommendation #4.** Staff recommends that the Commission also dismiss the allegations against Marty Michalson, PDC Case No. 03-156, because Mr. Michalson received checks from

Denis Bryant, Ginger Marshall and Gary Collett and reported these contributions. Mr. Michalson indicated that he called contributors he did not know and ask why they contributed to his race. No evidence was found that Mr. Michalson was informed that Mr. Bryant, Ms. Marshall or Mr. Collett were not the true contributors.

## **2001---Hank Hopkins/Environmental Materials Transport, LLC<sup>1</sup>**

During the 2001 Des Moines City Council elections, Mr. Hopkins again became interested in finding candidates who might further his goals of building the conveyor system. Mr. Hopkins met with Don Wasson, who was a city council member. Mr. Wasson wanted to be appointed Mayor of Des Moines, but the then city council members were not likely to appoint him as such. He was tired of being on the losing end of 6 to 1 votes, so he wanted to find candidates that supported his ideas and might be more likely to appoint him as Mayor.

There were four candidates running against incumbent council members in 2001. Those candidates were Henry M. (Mike) Foote, Gary Petersen, Richard Benjamin and Margaret (Maggie) Steenrod. Mr. Wasson encouraged Mr. Petersen and Ms. Steenrod to run for the council. As he became more familiar with Mr. Benjamin's ideas, Mr. Wasson decided to support him as well. All but Mr. Foote were elected.

Mr. Wasson met with Mr. Hopkins to discuss the candidates. Mr. Wasson suggested that with some help, the challenger candidates had a chance of being elected. Mr. Hopkins gave Mr. Wasson a \$1,000 check, issued from EMT's account, towards that effort.

Mr. Wasson then met with Tom Hujar, a political consultant. Mr. Hujar told Mr. Wasson that he could provide very little consultation or candidate assistance for just \$1,000. Mr. Hujar agreed to meet with the challenger candidates to determine what assistance they might need to get elected. Following those meetings, Mr. Hujar met with Mr. Wasson and told him that more money was needed to support these candidates. Mr. Hujar then met with Mr. Hopkins. Prior to committing any further funding of the campaigns, Mr. Hopkins requested that a survey be conducted to determine the prevailing attitude of Des Moines citizens on the issue of the third runway. Mr. Hopkins paid Mr. Hujar \$29,000 with EMT funds to conduct the survey, which included questions about each of the candidates. The survey showed that 60% of the voters in Des Moines were undecided as to the candidates. Based on those results, Mr. Hopkins asked Mr. Hujar to make a presentation to his investors, and Mr. Hujar did so. After that meeting, Mr. Hopkins agreed to pay Mr. Hujar approximately \$20,000 to assist in the challenger candidates' efforts. Mr. Hopkins paid Mr. Hujar in installments, with cashier's checks. The non-survey funds given by Mr. Hopkins were used by Mr. Hujar to hire subcontractors to write campaign literature for the candidates and to conduct advocacy calls on behalf of the candidates. One of the subcontractors met with candidates Benjamin and Foote. Ms. Steenrod had declined any

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<sup>1</sup> Any reference to Don Wasson is for informational purposes only. The Notice of Administrative Charges for Mr. Wasson will be dealt with separately.

campaign assistance. Mr. Hujar then concentrated his efforts on candidates Benjamin and Petersen.

Candidates Benjamin and Petersen each reported a \$750 contribution from Mr. Wasson, at Mr. Wasson's direction. This included each candidate's share in the initial \$1,000 received from Mr. Hopkins and paid to Mr. Hujar and \$250 worth of paper given to Mr. Wasson by Jerry Guite. In reality, Mr. Benjamin received \$14,800 worth of in-kind contributions, Mr. Petersen received \$3,500 and Ms. Steenrod benefited with \$1,000 of the \$20,000 given by Mr. Hopkins.

Mr. Hujar discussed PDC reporting requirements with both Mr. Wasson and Mr. Hopkins. He told them that they had to make a decision whether to report these expenditures to candidates as independent expenditures or set up a political committee and file reports. Mr. Hopkins did not want to report the expenditures as "independent" because he wanted to "keep a low profile." According to both Mr. Wasson and Mr. Hujar, they feared that if the true source of the funds was revealed, the candidates might be harmed.

When Mr. Wasson solicited and accepted the \$1,000 contribution from Mr. Hopkins, he created a political committee. Mr. Wasson failed to register that political committee and report its activities to the PDC. (This matter is included in PDC Case No 02-296 and will be addressed separately.)

The contributions to Mr. Benjamin and Mr. Petersen were concealed by Mr. Wasson's unregistered political committee and by Mr. Hopkins.

Mr. Hopkins fostered the concealment when he paid Mr. Hujar directly for work that benefited the candidates. Neither Mr. Hopkins nor Mr. Hujar informed the candidates of the contributions. This non-action resulted in concealing the source and amount of the contributions from the candidates and the public.

## **Staff Recommendations**

Staff believes that Hank Hopkins intentionally concealed the fact that he was the source of contributions of \$21,000 that was used to benefit candidates Richard Benjamin, Maggie Steenrod and Gary Petersen in 2001. Mr. Hopkins also failed to notify the candidates of the true source and value of the contributions because Mr. Hopkins wanted to keep a low profile. Mr. Hopkins had paid for the services of Tom Hujar, who prepared campaign literature and conducted advocacy calls for Mr. Benjamin and Mr. Petersen, as well as candidate Maggie Steenrod.

**Recommendation #5.** Staff recommends that in PDC Case No. 03-153, the Commission find that Henry Hopkins committed multiple apparent violations of RCW 42.17.120 by concealing the true source of funds used and not disclosed to benefit candidates in the 2001 Des Moines City Council race, and refers the matter to the Office of the Attorney General for further action.

**Recommendation #6.** Staff recommends that the Commission dismiss the allegations of violations of RCW 42.17.120 against the following individuals named in PDC Case No. 02-296 for the reasons given:

- Gary Petersen---There is not evidence proving that Mr. Petersen was aware that Mr. Hopkins was funding Mr. Wasson's effort to help him get elected. Mr. Wasson told Mr. Petersen to report an in-kind contribution of \$750 from Mr. Wasson.
- Richard Benjamin---There is no evidence demonstrating that Mr. Benjamin was aware that Mr. Hopkins was funding Mr. Wasson's effort to assist his campaign. Mr. Wasson told Mr. Benjamin to report an in-kind contribution of \$750 from Mr. Wasson.
- Mike Foote---Mr. Foote did not benefit from any of the actions undertaken by Mr. Wasson and Mr. Hopkins.
- Margaret Steenrod---Ms. Steenrod, when first contacted about possible assistance from Mr. Wasson, declined the offer. Any activities undertaken by the group were not contributions to Ms. Steenrod.